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CHARLES ELMORE

IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1935.

No. 525

Great Western Power Company of California,

Petitioner,

vs.

Commissioner of Internal Revenue,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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Great Western Power Company of California,

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Great Western Power Company of California, respectfully shows to this Honorable Court that this is a petition for writ of certiorari to the Circuit Court of Appeals for the Second Circuit to review a decision made and entered by that court on July 22, 1935, reversing the decision of the United States Board of Tax Appeals.

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

I.

HISTORY OF THE CASE.

This controversy was originated by a deficiency letter issued by the Commissioner of Internal Revenue on March 4, 1930, proposing additional taxes against the petitioner for the year 1924 of $26,293.40.

A timely appeal was taken by petitioner to the United States Board of Tax Appeals in which there was presented the question of whether petitioner, in determining its net taxable income for the year 1924, was entitled to take as a deduction its unamortized discount and expenses of issuing bonds and expenses and premiums paid on the retirement of bonds during said year. The Board of Tax Appeals held in favor of the petitioner, basing its opinion upon the decision of the United States Circuit Court of Appeals for the Ninth Circuit in the case of *San Joaquin Light & Power Corporation v. John P. McLaughlin, Collector of Internal Revenue,* 65 F. (2d) 677. The United States Circuit Court of Appeals for the Second Circuit reversed the Board of Tax Appeals and disallowed the deductions. The final decision of the Circuit Court of Appeals for the Second Circuit was entered on July 22, 1935. [R. p. .....]

II.

QUESTION INVOLVED.

Is the Petitioner, in the Determination of Its Net Taxable Income for the Year 1924, Entitled to Take as a Deduction on Account of the Retirement of Its Bonds the Unamortized Discount and Expenses of Issuing Said Bonds and Expenses and Premiums Paid in the Retirement Thereof?

III.

STATEMENT OF FACTS.

During the year 1924 the Great Western Power Company of California, petitioner herein, was a public utility corporation and as such was subject to the jurisdiction of the California State Railroad Commission and kept its books on the accrual basis in accordance with the classification of accounts prescribed by the said commission. [R. p. 110.] During the year 1921 the petitioner issued and sold its General Lien 8% Gold Bonds dated February 1, 1921, and due February 1, 1936 to the face value of $2,500,000.00. These bonds were secured by what is known as its General Lien Indenture dated February 1, 1921, wherein its property was, subject to prior encumbrances, mortgaged and conveyed in trust for the benefit of these bondholders. These bonds were sold at a discount of $150,000.00 and the expense of their issuance was $22,283.54. [R. p. 112.] They were subject to call by the petitioner before maturity and, if called, the holders were entitled at their option to receive in exchange for them 105% in cash or a 5% premium in cash and bonds known as Series B 7's of the same par value. [R. p. 167.]

The bonds known as Series B 7's were dated August 1, 1920, and were issued by the petitioner in 1921. They were due August 1, 1950. This issue was of the par value of $8,500,000.00. [R. p. 114.] Of these bonds $2,500,000.00 in par value were delivered to the trustees under the General Lien Indenture and held by such trustees as additional security for the bonds known as General Lien 8's and so held that they might be available for distribution to such holders of the General Lien 8's as should elect to take them if and when the 8's should be called. Of the remainder of the issue Series B 7's, $1,000,000.00 in par value were sold to the public for cash at a discount of $100,000.00 and the remainder delivered to trustees as additional security for another issue of bonds not here involved. [R. p. 114.]

By December 31, 1923, the petitioner had purchased for cash and retired its General Lien 8's of the par value of $11,000.00 and had charged off the proportionate amount of unamortized discount and expense of issuance as a loss in the year of retirement. [R. p. 112.] This left General Lien 8's outstanding to the face value of $2,489,000.00 on May 8, 1924, and on that date petitioner's board of directors passed a resolution for the redemption of the remainder of the issue. On August 1, 1924, holders of these bonds to the face value of $2,354,000.00, having elected to exercise their option to take in exchange Series B 7's plus the 5% premium in cash, were paid a cash premium of $117,725.00 and given Series B 7's par for par for their General Lien 8's which were then retired. [R. pp. 112-113.] The unamortized discount applicable to the bonds so converted was $126,176.97 as of August 1, 1924, and the expense of

conversion was $1,461.05. The petitioner attempted to take as a deduction in 1924 the sum of these three items, namely, the premium paid, the unamortized discount and the expense of conversion, making in all $245,363.02. The Commissioner of Internal Revenue, however, determined that such amount should be amortized over the life of the Series B 7's exchanged for the General Lien 8's and allowed only $2,027.96 to be deducted in 1924. [R. p. 113.]

The remainder of the General Lien 8's outstanding as of August 1, 1924 after the conversion above mentioned were then purchased by the petitioner for cash and retired. The commissioner concedes that the premium paid on these bonds, together with the unamortized discount and the expense of retirement applicable to them, was an allowable deduction from 1924 income. [R. p. 113.]

So far as was necessary, the $2,500,000.00 in face value of the Series B 7's which were delivered to the trustees under the General Lien Indenture were used to make the exchange with the holders of $2,354,500.00 in face value of the General Lien 8's. Of the remainder of $145,500.00 in face value of the Series B 7's held by those trustees $11,000.00 in face value were returned to the petitioner because of its previous purchase from the public for cash and the retirement of that amount face value of General Lien 8's and the remainder was returned to the petitioner because of its redemption for cash after the call date of a like amount par value of the 8's. None of these Series B 7's so returned to the petitioner were reissued. [R. p. 115.]

The United States Board of Tax Appeals decided in favor of petitioner and held that the deductions were

allowable, the decision of the Board being based upon the decision of the United States Circuit Court of Appeals for the Ninth Circuit in the case of *San Joaquin Light & Power Corporation v. John P. McLaughlin, Collector of Internal Revenue,* 65 F. (2d) 677. In the instant case the Circuit Court of Appeals for the Second Circuit reversed the Board and held that the deductions were not allowable.

B.

REASONS FOR GRANTING THE PETITION.

1. The decision of the United States Circuit Court of Appeals for the Second Circuit is in direct conflict with the decision of the United States Circuit Court of Appeals for the Ninth Circuit rendered in the case of *San Joaquin Light & Power Corporation v. John P. McLaughlin, Collector of Internal Revenue,* 65 F. (2d) 677.

2. The decision of the United States Circuit Court of Appeals for the Second Circuit is in conflict with the decision of this Honorable Court in the case of *United States v. Kirby Lumber Co.,* 284 U. S. 1.

3. The decision of the United States Circuit Court of Appeals for the Second Circuit is in conflict with the decision of the United States Circuit Court of Appeals for the First Circuit rendered in the case of *Commissioner v. Coastwise Transportation Corp.,* 62 F. (2d) 332 (see also 71 F. (2d) 104).

4. The decision of the United States Circuit Court of Appeals for the Second Circuit is in conflict with the provisions of Article 545 of Regulations 65 promulgated by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, which regulations have

been in force and effect for many years, during which time there have been repeated re-enactments of the statute.

5. The issues in this case also present important questions of federal law which have not been but should be settled by this Honorable Court.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record of all proceedings in the case numbered and entitled Docket No. 402, *Commissioner of Internal Revenue, Petitioner, v. Great Western Power Company of California, Respondent,* and that the judgment of the Circuit Court of Appeals for the Second Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

Respectfully submitted,

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IN THE

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1935.

No.....

Great Western Power Company of California,

Petitioner,

vs.

Commissioner of Internal Revenue,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT.

I.

Opinions Below.

The opinion of the United States Circuit Court of Appeals for the Second Circuit was rendered, entered and filed on July 22, 1935, unreported to date. [R. pp. .....] The opinion of the United States Board of Tax Appeals was promulgated on April 26, 1934 [R. pp. 61-77], 30 B. T. A. 503.

II.

Jurisdiction.

1. The judgment to be reviewed was entered on July 22, 1935. The time to apply for a writ of certiorari, therefore, runs from this date.

2. The Board of Tax Appeals had jurisdiction of this case under section 274 (a) of the Act of Congress, approved February 26, 1926, entitled the "Revenue Act of 1926" (44 Stat. 55; 26 U. S. C. A., Sec. 1048). The appeal to the Circuit Court of Appeals was taken in pursuance of the provisions of sections 1001, 1002 and 1003 of the Act of Congress, approved February 26, 1926, entitled the "Revenue Act of 1926" (44 Stat. 1, 109, 110, 26 U. S. C. A., Sections 1224, 1225, 1226), as amended by section 603 of the Act of Congress, approved May 29, 1928, entitled the "Revenue Act of 1928" (45 Stat. 873, 26 U. S. C. A., Section 1224), as amended by section 1101 of the Act of Congress approved June 6, 1932, entitled the "Revenue Act of 1932" (47 Stat. 286), and as further amended by section 519 of the Act of Congress, approved May 10, 1934, entitled the "Revenue Act of 1934" (48 Stat. 760, 26 U. S. C. A., Section 1225).

3. This court has jurisdiction to review the judgment of the Circuit Court of Appeals. *Old Colony Trust Company, et al., Executors, v. Commissioner,* 279 U. S. 716, section 240, *Judicial Code,* 28 U. S. C. A. 347.

III.

Question Involved.

IS THE PETITIONER IN THE DETERMINATION OF ITS NET TAXABLE INCOME FOR THE YEAR 1924 ENTITLED TO TAKE AS A DEDUCTION ON ACCOUNT OF THE RETIREMENT OF ITS BONDS THE UNAMORTIZED DISCOUNT AND EXPENSES OF ISSUING SAID BONDS AND EXPENSES AND PREMIUMS PAID IN THE RETIREMENT THEREOF?

IV.

Assignments of Error.

(1) The United States Circuit Court of Appeals for the Second Circuit erred in reversing the board and in holding that the sum of $245,363.02 representing premiums, unamortized discount and expenses paid by petitioner in the retirement of $2,354,500.00 face amount of its General Lien 8% bonds was not deductible in the determination of petitioner's net taxable income for the year 1924.

(2) The United States Circuit Court of Appeals for the Second Circuit erred in reversing the decision of the United States Board of Tax Appeals.

(3) The United States Circuit Court of Appeals for the Second Circuit erred in failing to follow the decision of the United States Circuit Court of Appeals for the Ninth Circuit in the case of *San Joaquin Light & Power Corporation v. John P. McLaughlin, Collector of Internal Revenue*, 65 F. (2d) 677.

V.

Statutes and Regulations Involved:

See Appendix pages 25-26.

VI.

Law and Argument.

The Revenue Act of 1924 provides that a taxpayer may take as a deduction in the determination of its net taxable income, among other things, losses sustained and interest paid during the taxable year. The regulations of the Commissioner of Internal Revenue promulgated with the approval of the Secretary of the Treasury, have consistently provided that in the retirement of bonds a taxpayer is entitled to take as a deduction during the year of retirement its unamortized bond discount and expense of issuing as well as the premiums and expenses paid in the retirement thereof.

The regulations also provide that where bonds are redeemed for less than their issuing price the corporation sustains a taxable gain. This Honorable Court in the case of *United States v. Kirby Lumber Company,* 284 U. S. 1, approved these regulations and held that a corporation purchasing or redeeming its bonds below the issuing price realized a taxable gain. The case at bar involves the converse of the foregoing proposition, namely, that a taxpayer suffers a deductible loss in the retirement of its bonds at a price in excess of the issuing price.

The Ninth Circuit Court of Appeals in the case of *San Joaquin Light & Power Corporation v. John P. McLaughlin,* 65 F. (2d) 677, held that a corporation did suffer a de-

ductible loss in the retirement of its bonds at a price in excess of the issuing price. This court, last named, held that when bonds are retired the unamortized bond discount and expense of issuing the bonds as well as the premiums and expenses paid in the retirement thereof were deductible. The decision of the Ninth Circuit Court of Appeals in the above mentioned case is directly in conflict with the decision of the Second Circuit Court of Appeals in the case at bar. It is further respectfully submitted that the decision of the Second Circuit Court of Appeals is directly in conflict with the decision of this Honorable Court in the case of *United States v. Kirby Lumber Company,* 284 U. S. 1.

As heretofore stated, the regulations promulgated by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury have consistently permitted the deduction claimed by petitioner.

Subdivision (3) of Article 545 of Regulations 65 promulgated under the Revenue Act of 1924 provides in part as follows:

> "(a) If bonds are issued by a corporation at a discount, the net amount of such discount is deductible and should be prorated or amortized over the life of the bonds. (b) If thereafter the corporation purchases and retires any of such bonds at a price in excess of the issuing price plus any amount of discount already deducted, the excess of the purchase price over the issuing price plus any amount of discount already deducted (or over the face value minus any amount of discount not yet deducted) is a deductible expense for the taxable year."

This Article applies specifically to all phases of bond discount, and it has been held likewise to apply to the expense of issuing bonds. (*Helvering v. California Oregon Power Co.*, C. A. of D. C., decided January 7, 1935; 75 F. (2d) 644).

Article 545 of Regulations 65 is the same as Article 545 of Regulations 62 promulgated under the Revenue Act of 1921, and the same as Article 544 of Regulations 45 promulgated under the Revenue Act of 1918. It has been continued without change under each of the Revenue Acts since 1924. See Article 545 of Regulations 69 (1926 Act), Article 68 of Regulations 74 (1928 Act), Article 68 of Regulations 77 (1932 Act), and Article 22 (a) (18) of Regulations 86 (1934 Act).

Since this article of the regulations was first promulgated in its present form Congress has six times reenacted the statute upon which it is based. The repeated re-enactment of the statute in the face of consistent administrative construction amounts to legislative approval of the statute as so construed. (*National Lead Company v. United States*, 252 U. S. 140; *Brewster v. Gage*, 280 U. S. 327; *Universal Battery Co. v. United States*, 281 U. S. 580; *Fawcus Machine Co. v. United States*, 282 U. S. 375; *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488; *Murphy Oil Co. v. Burnet*, 287 U. S. 299.)

Furthermore, Article 545 of Regulations 62 (which is identical with Article 545 of Regulations 65) has been

expressly approved by this Honorable Court in *United States v. Kirby Lumber Company,* 284 U. S. 1, and by the Circuit Court of Appeals for the Ninth Circuit in *San Joaquin Light and Power Corporation v. McLaughlin,* 65 F. (2d) 677.

We may safely say, therefore, that Article 545 of Regulation 65 is unquestionably a correct exposition of the law.

We would also call to the attention of this Honorable Court the fact that in the cases of *Commissioner of Internal Revenue v. Coastwise Transportation Company,* 62 F. (2d) 332, decided on December 17, 1932, and *San Joaquin Light and Power Corporation v. McLaughlin,* 65 F. (2d) 677, decided on June 19, 1933, the same construction of Article 545 as is now advocated by the respondent herein was refused by the Circuit Court of Appeals for the First and Ninth Circuits, respectively. Since the time of those decisions the Revenue Act of 1934 has been passed in which is embodied the same provisions as contained in the Acts under which those cases were decided, and Article 22 (a) (18) of Regulations 86 promulgated on February 11, 1935, is identical with Article 545 of Regulations 69 and 545 of Regulations 62 considered by the courts in making the above decisions. If the interpretation placed upon those articles by the courts in the above cited cases was erroneous, as the respondent would have us believe that they were (although a writ of *certiorari* was not sought in either case), then it is apparent that in promulgating Regulations 86 the erroneous

interpretation could have been corrected by the simple expedient of wording Article 22 (a) (18) so as to except from its provisions those cases in which new bonds were exchanged for old on the retirement of the latter. The fact that no change was made in the law following these decisions and that no such exception appears in Regulations 86 is, we submit, conclusive evidence that Article 545 as interpreted by the courts in the above cited cases is a correct exposition of the law.

Petitioner during the year 1924 in the retirement of its General Lien 8's paid a cash premium of $117,725.00; its unamortized discount applicable to these bonds amounted to $126,176.97 and the expense of conversion amounted to $1,461.05.

The Circuit Court of Appeals for the Second Circuit in effect held that the cash premium as well as the unamortized bond discount and expense of conversion attached to the Series B 7's which were used by petitioner in the retirement of the General Lien 8's and should, therefore, be spread over the life of the new Series B 7's. Whether the unamortized discount and expense and premium paid on the retirement of the old bonds constitute part of the use of the old money or part of the use of the new money, acquired upon the issuance of the new bonds, is a question of fact and can be answered only by examining the facts. The facts, we respectfully submit, demonstrate conclusively that the unamortized bond discount and expense of issuing and also the premiums and

expenses paid in the retirement of the bonds constituted part of the use of the old money and did not in any wise represent a part of the cost of the new bonds.

In the case of *United States v. Kirby Lumber Co.*, 284 U. S. 1, this Honorable Court held that a corporation purchasing or redeeming its bonds below the issuing price realized a taxable gain. The gain would be realized whether the bonds were retired for cash or property. The mere fact that new bonds were issued as a part consideration for the retirement can have no material bearing. Indeed, it is believed that the respondent will not challenge this statement.

We respectfully submit that the converse of this is true; that where a corporation retires its bonds for an amount in excess of the price of issuance it sustains a deductible loss. Since the Revenue Act recognizes gains and losses from sales and exchanges of property, it does not make any difference whether the bonds were retired for cash or partly for cash and other bonds.

It is respectfully submitted that the petitioner's contention as to the interpretation of Article 545 as applied to the instant case is correct from the standpoint of reason as well as upon the authorities above cited. In view of the recent decisions applying the corresponding articles in the Commissioner's other regulations there can be no doubt but what, if the General Lien 8's here in question had been retired for cash, the petitioner would have been entitled to the deduction claimed, (*United States v.*

Kirby Lumber Co., 284 U. S. 1; *Detroit Garages Inc.*, B. T. A. memorandum opinion unreported, July 13, 1934; *American Chicle Co.*, 23 B. T. A. 291). Nor can there be any doubt but what the same would hold true if the bonds had been retired for cash secured by the issuance and sale of new bonds for the express purpose of making such retirement. (*Helvering v. Union Public Service Co.*, C. C. A. 8, January 2, 1935, 75 F. (2d) 723; *Helvering v. The California Oregon Power Co.*, C. A. of D. C., January 7, 1935, 75 F. (2d) 644; *Helvering v. Central States Electric Corp.*, C. C. A. 2, April 1, 1935, 76 F. (2d) 1011; *San Joaquin Light and Power Co.*, 65 F. (2d) 677; *East Ninth Euclid Co.*, 26 B. T. A. 32.)

The only ground upon which the respondent attempts to distinguish the transaction in the instant case from those involved in the cases next above cited, and thereby remove it from the provisions of Article 545, is that the General Lien 8's here in question were not "purchased and retired" within the meaning of the article. We submit that such a ground for distinction is nonexistent. The holders of the $2,354,500.00 General Lien 8's who participated in the exchange accepted the like amount of Series B 7's and the $117,725.00 in cash as full payment of the petitioner's debt to them under the General Lien Indenture. By such acceptance and the subsequent retirement of these bonds the petitioner's obligation under this indenture was completely extinguished, and thereafter the rights of the persons who accepted the Series B 7's were maintainable solely under the entirely different First and Refunding Mortgage. Petitioner submits that the exchange, therefore, was a purchase and retirement falling squarely within the provisions of Article

545, and that it *required* the deduction in the year 1924 of the then unamortized discount and expense and the premiums paid upon the bonds so retired.

Respondent concedes that the petitioner is entitled to take as a deduction for the year 1924 the same items applicable to the bonds which were retired for cash, but contends that it is otherwise with respect to the bonds retired by the exchange. We are at a loss to understand why any such distinction should be drawn. As pointed out above, if the Series B 7's had been sold on the open market and the proceeds thereof used to retire the General Lien 8's petitioner would unquestionably have been entitled to the deduction. Why is this true? The answer to this question seems to be that as a result of such sale a new liability would have been created to which new incidents would have been attached. This, however, is equally true in the case as it stands. No obligation under the Series B 7's here in question arose until after they had been issued to the holders of the General Lien 8's in exchange for their bonds, and the incidents of this new liability were no different in the hands of these holders than they would have been in the hands of other holders.

Moreover, the General Lien 8's which were redeemed for cash were identically the same as those which were exchanged for the Series B 7's. They were all issued under the same indenture, the rights of all the holders thereof were the same, and they were all retired pursuant to the same call. The indenture was a mortgage on petitioner's property and the retirement of the bonds thereunder released certain of its assets—a deciding factor in determining whether gain or loss is to be recognized on the transaction (*United States v. Kirby Lumber*

Co., 284 U. S. 1), but the bonds which were retired for cash were no more effective in bringing about this release than were the bonds retired by the exchange.

The respondent's contention that the bonds retired by the exchange must be accorded a different treatment than those retired for cash is tantamount to saying that the petitioner's deductions for income tax purposes are dependent upon pure circumstances arising from the voluntary acts of third persons. This is clearly not within the contemplation of any literal construction of the statute and petitioner submits that there is much more merit in the theory adopted by the Board of Tax Appeals in deciding the case below: namely, that the question should be decided on principle and not upon circumstance. We recognize, of course, that a strict construction of a statute sometimes leads to absurd results, and that in such cases it will not be adopted by the courts, but we do not believe that there is any liklihood of such a result from a strict construction of the regulation here in question. On the contrary, we believe that it is only by means of a strict construction that an extremely chaotic condition in the administration of the law can be averted. If the construction advocated by the respondent were to be adopted it would permit the pyramiding of deductions; i. e., it would, in all cases such as this, permit the carrying forward from one bond issue to the next all of the unamortized discount and expense applicable to, and the premiums paid on the retirement of, prior issues. Undoubtedly there are outstanding in this country at the

present time many bond issues which are the outgrowth of prior issues, and it is conceivable that in such cases it would be necessary to go back perhaps fifty years or more to determine the present annual amortization properly applicable to any single issue now outstanding; and it is likewise conceivable that as the result of such pyramiding the present annual amortization charges would be so large as to entirely eliminate the issuing company's annual income. It is respectfully submitted that any such construction of the statute which would not only permit such a result, but would in fact compel it, is clearly unreasonable.

Again we wish to emphasize that the United States Circuit Court of Appeals for the Ninth Circuit in the case of *San Joaquin Light & Power Corporation v. John P. McLaughlin, Collector of Internal Revenue,* 65 F. (2d) 677, had before it the identical issues presented in this matter and that it decided against the contention of the government.

In conclusion, it is respectfully submitted that the policy of the law with respect to the deductions here in question has long since been definitely settled and that nothing is now to be gained by delving into abstract theories in an effort to devise some idealistic method by which such deductions *might* be taken. The regulations provide that they shall be taken when the bonds are purchased and retired; this regulation is reasonable, it is simple of application, it has on numerous occasions been approved by the courts, and now to import to it the theoretical limita-

tion advocated by the respondent can only serve to unsettle the law and make for confusion in its administration.

Wherefore, in view of the foregoing it is urged that this petition be granted in order that this Honorable Court may pass upon this important question, reverse the decision of the United States Circuit Court of Appeals and relieve petitioner of the grievous injustice that has been done it on account hereof.

Respectfully submitted,

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APPENDIX.

Revenue Act of 1924, c. 234, 43 Stat. 253:

SEC. 234. (a) In computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, * * *.

* * * * * * * * *

(2) All interest paid or accrued within the taxable year on its indebtedness, * * *

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 519. VENUE FOR APPEALS FROM BOARD OF TAX APPEALS.

(a) Section 1002 of the Revenue Act of 1926 is amended to read as follows:

"VENUE

"Sec. 1002. (a) Except as provided in subdivision (b), such decision may be reviewed by the Circuit Court of Appeals for the circuit in which is located the collector's office to which was made the return of the tax in respect of which the liability arises or, if no return was made, then by the Court of Appeals of the District of Columbia.

"(b) Notwithstanding the provisions of subsection (a), such decision may be reviewed by any Circuit Court of Appeals, or the Court of Appeals of the District of Columbia, which may be designated by the Commissioner and the taxpayer by stipulation in writing."

Treasury Regulations 65, promulgated under the Revenue Act of 1924:

ART. 545. *Sale and retirement of corporate bonds.*—

* * * * * * * * *

(3) (a) If bonds are issued by a corporation at a discount, the net amount of such discount is deductible and should be prorated or amortized over the life of the bonds. (b) If thereafter the corporation purchases and retires any of such bonds at a price in excess of the issuing price plus any amount of discount already deducted, the excess of the purchase price over the issuing price plus any amount of discount already deducted (or over the face value minus any amount of discount not yet deducted) is a deductible expense for the taxable year. (c) If, however, the corporation purchases and retires any of such bonds at a price less than the issuing price plus any amount of discount already deducted, the excess of the issuing price plus any amount of discount already deducted (or the face value minus any amount of discount not yet deducted) over the purchase price is gain or income for the taxable year.

ART. 563. *Sale of capital stock, bonds, and capital assets.*— * * * If it sells its bonds at a discount, the amount of such discount is treated in the same way as interest paid, and if it retires its bonds at a price in excess of the issuing price, such excess may usually be deducted as expense. See articles 545 and 848 * * *